

**REMARKS**

This paper is a response to the Final Office Action dated January 22, 2009. Prior to entry of this paper, Claims 1-25 were pending in this application. Claims 1-25 are amended and Claim 26 is newly added. No claims are canceled. Accordingly, upon entry of this paper, Claims 1-26 will be pending. In addition, the specification is amended to correct informalities. No new matter is added.

In the instant Office Action, pending Claims 1-25 were rejected under 35 U.S.C. § 103 as allegedly unpatentable over a combination of U.S. Patent Number 6,502,194 ("Berman") and U.S. Patent Publication No. 2001/0030660 ("Zainoulline").

Applicant respectfully submits that independent Claim 1 is allowable at least because the applied references fail to disclose or suggest "computer-readable instructions specifying a number of beginning portions of songs to cache in advance and size of a pre-buffer cache" as recited by Claim 1, as amended.

In rejecting pending Claims 1-25, at page 5 of the instant Office Action, the Examiner admits that Berman does not explicitly disclose said program including computer-readable instructions for specifying number of songs to cache in advance and size of a pre-buffer cache but, instead, alleges that such features are obvious. To support this allegation, the Examiner alleges that Berman "recognizes that the size of the buffer and number of songs are relatively flexible." The Examiner does not point to Zainoulline as disclosing or suggesting computer-readable instructions for specifying number of songs to cache in advance and size of a pre-buffer cache.

While Applicant agrees that Berman does not explicitly disclose said program including computer-readable instructions for specifying number of songs to cache in advance and size of a pre-buffer cache, Applicant respectfully disagrees with the Examiner's finding of obviousness. Rather, Applicant asserts that Berman teaches away from instructions of the type Applicant claims.

In particular, the amount of data buffered by Berman is set by the amount of memory that Berman's processor can access – not by computer-readable instructions specifying a number of beginning portions of songs to cache in advance and size of a pre-buffer cache. (Berman, col. 11, lines 29-43.) Specifically, Berman states "[t]he number of buffers that can be accommodated by the playback unit is determined by the amount of memory (bytes) that the playback microprocessor can access, so the number of buffers available will be variable." (Berman, col. 11, lines 34-38.)

Based on this statement, one skilled in the relevant art would recognize that Berman's buffers are configured based on factors such as the amount of available physical memory, the number of available memory addressing bits, system architecture, etc, all of which are generally static. In such a system, one skilled in the relevant art would generally configure the buffers at an application or system build time. Accordingly, there is no need or reason for Berman to employ "computer-readable instructions specifying a number of beginning portions of songs to cache in advance and size of a pre-buffer cache" as Applicant's Claim 1 now recites.

Applicant respectfully requests that the 35 U.S.C. § 103 rejection of Claim 1 be withdrawn for at least these reasons.

Applicant respectfully submits that independent Claims 6 and 16 are allowable at least because the applied references fails to disclose or suggest "wherein the number of beginning portions of songs to pre-cache in advance and size of the pre-buffer cache are specified by a function call" as recited by Claims 6 and 16, as amended.

Claims 2-5, 7-15, and 17-25 depend from one of the above discussed independent claims. Applicant respectfully submits that these dependent claims are allowable for at least this reason.

#### New Claim 26

Applicant respectfully submits that new independent Claim 26 is allowable over the applied references at least because the applied references fails to disclose or

suggest "wherein the number of beginning portions to be pre-downloaded is configurable via a function call" as recited.

Applicant respectfully submit that new independent Claim 26 is fully supported by Applicant's disclosure, e.g. by figures 1a, 1b, and 3b and paragraphs [0007], [0027], and [0028], as published.

Conclusion

In view of the foregoing, the pending claims are patentable over the applied art. The applicants accordingly request reconsideration of the application and a mailing of a Notice of Allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Michael A. Glenn at 650-474-8400

Respectfully submitted,



Michael A. Glenn

Reg. No. 30,176

Customer No. 22862